

**COAC Global Supply Chain Subcommittee – Air Cargo Advance
Screening Work Group**
**Review of CBP Draft White Paper – Air Cargo Advance Screening (ACAS): Pilot
to Regulation**

Overview and Recommendations to GSCS – August 2013

I. OVERVIEW

a. Introduction

The Air Cargo Advance Screening (ACAS) pilot, ongoing with express carriers for 2.5 years and with passenger carriers for approximately 2 years, has been an un-paralleled success in terms of:

- Establishing a robust industry-government platform for co-creation and bi-directional education;
- Leveraging the natural structure and milestones of the global supply chain in order to provide a security benefit that does not unduly burden the movement of legitimate goods;
- Relying on empirical data to inform decision-making, ensuring the development of the most effective and efficient system possible.

In addition, CBP has established itself internationally as a leader and visionary in the development of a rational and effective pre-departure targeting regime, and the eyes of the world are on the U.S. as it moves ACAS from pilot to a regulatory mandate. The way in which CBP implements ACAS in terms of regulations, IT functionality, processes and policy guidance will have an outsize influence on how such advance data systems develop in the rest of the world.

ACAS stakeholders therefore believe it is critical to get ACAS “right”, to ensure that the lessons learned in the pilot are at the heart of the final state system, and to make sure the policy objectives of ACAS are kept foremost in mind as the wide-ranging pilot is reduced to regulatory text and policy implementation. An unsuccessful outcome would not only damage the reputation of the ACAS pilot as a game-changer and result in a significant immediate burden on goods being imported to or transiting through the U.S., but also have the potential to negatively influence international developments to the detriment of U.S. carriers and the global supply chain overall.

b. ACAS WG History

On March 27, CBP provided COAC with a draft white paper titled “Air Cargo Advance Screening (ACAS): Pilot to Regulation” (“White Paper”, “paper”), setting out ACAS regulatory requirements under consideration by CBP. The COAC Global Supply Chain

Security ACAS Work Group (“ACAS WG”) was charged with providing CBP with comprehensive trade commentary on the paper. To guarantee robust input from all air cargo stakeholders, the ACAS WG trade co-chairs enlisted numerous non-COAC members to provide representation of:

- Multiple air cargo business models and varying IT system capabilities;
- Carriers - U.S./foreign, express/conventional and all-cargo/passenger;
- Freight forwarders - large/medium/small - and the courier community.

After initial meetings and analysis of the White Paper, the ACAS WG determined the most efficient and productive method of review and commentary development was delineation of the paper into five distinct subject matter areas:

- **Filing Regimes** (ACAS White Paper Section IV)
 - Integrated Carrier / Conventional Carrier
 - Freight Forwarder / Conventional Carrier
- **Compliance Regime** (ACAS White Paper Sections VII-X)
- **Data Elements** (ACAS White Paper Section I)
- **Parties Eligible to Transmit – Pre-requisites and Regulatory Structure** (ACAS White Paper Sections II/III)
- **Referrals/Holds – ACAS Policy and ACAS/Air-AMS Hold Interaction** (ACAS White Paper Sections V/VI)

One to three ACAS WG members were assigned as leads for each topic, responsible for developing a work plan that ensures: 1) the provision of sufficient opportunities for input and discussion to ACAS pilot participants, 2) the scheduling of sufficient opportunities for robust analysis and practical exercises (where needed), and 3) the drafting/delivery of meaningful, substantive commentary and recommendations. Work on each topic has progressed in an iterative manner, with outreach to a broad segment of trade via mechanisms such as the ACAS Pilot Participants Working Group¹ and the Airforwarders Association Security Committee. The outline of the process is as follows:

1. A “thought paper” drafted by the ACAS WG lead(s) is distributed, initiating a multi-party trade dialogue (e-mail discussions and conference calls, and occasional face-to-face meetings) lasting several weeks;
2. During this time, significant “multi-directional education” and brainstorming takes place, promoting general stakeholder agreement on the issues and the development of industry-wide solutions;
3. The thought paper evolves through multiple drafts into a comprehensive document covering all aspects of the subject at hand. The process concludes with the drafting of recommendations on each topic to be presented to the GSCS.

¹ The ACAS Pilot Participants Working Group (APPWG) is a joint body established by Airlines for America, the Express Association of America, the International Air Transport Association, and the Cargo Airline Association, and composed of ACAS pilot participants at the level of “test” or above.

In addition to the present overview and recommendations paper, four work products covering the first three topics above – filing regimes, the compliance regime, and data elements – have been completed and presented to CBP. These documents are:

- Framework for Self-Filer Solution – Integrated Cargo on Conventional Carriers
- Framework for Self-Filer Solution – Freight Forwarder Cargo on Conventional Carriers
- ACAS Compliance Regime Paper
- ACAS Data Elements Paper

All of the above documents, in particular the recommendations contained therein, are subject to ongoing revision in order to provide:

- Additional information in response to commentary/questions received from CBP,
- Modifications based upon ongoing industry-CBP discussion, and
- Necessary additions/modifications based on new pilot experience and analysis.

Recommendations on these three topics are set forth below. Work on the last two topics has commenced, with work products and recommendations planned for the October COAC meeting.

II. ACAS WG Recommendations to the GSCS – August 2013

a. General

- i. All recommendations are based on the principle that each element of the ACAS regulatory regime should 1) take into account the lessons learned during the pilot period and 2) leverage existing standard business practices and interactions among trade parties, as well as the status of those trade parties in order to promote the key ACAS policy objective of early data targeting that minimizes the associated negative impact on air carrier operations, the air cargo business model, and the movement of legitimate goods.
- ii. All recommendations have been developed from and are backed up by the substantial research, analysis and examples contained in the four work products listed above. The ACAS WG strongly recommends that these detailed commentaries be closely reviewed by CBP to guide implementation of the high-level recommendations set out below.

b. The regulatory filing regimes developed for ACAS should:

- i. Recognize both the Integrated Carrier – Conventional Carrier business model and the Freight Forwarder – Conventional Carrier business model as distinct entities in terms of commercial practices, operational characteristics and technological capacities, warranting that each have a unique self-filing regime designed to achieve the primary ACAS policy objective of securing early-as-possible data submission for security risk analysis in order to minimize the negative impact of pre-departure screening on the movement of legitimate goods.

- ii. Recognize ACAS as a discrete advance data system justifying development of a specific self-filing regime that differs from Air AMS in terms of filing pre-requisites and regulatory responsibility.
- iii. Establish an Integrated Carrier ACAS filer category that is subject to enhanced regulatory oversight and responsibilities, in particular the responsibility to file ACAS data and fulfill ACAS requirements for all shipments, whether these are travelling on the integrated carrier or another carrier, and a concurrent limitation on the regulatory responsibility of the carrier that is transporting integrated carrier shipments.
- iv. Establish a Freight Forwarder ACAS filer category, independent of Air AMS, that is designed to promote robust freight forwarder participation via less stringent pre-requisites for participation and a more narrowly-tailored compliance regime than Air AMS, recognizing that ultimate responsibility lies with air carriers who have a far more significant interest in ACAS transmission and verification than in Air AMS.

c. The compliance regime developed for ACAS should:

- i. Employ an “account-based” approach, including the establishment of an account management structure for air carriers, that is designed to allow the full picture of a participant’s compliance level with multiple advance data requirements, continuous quality improvement efforts and trusted trader status to be used in the determination of appropriate compliance measures, and to focus not on transaction-based monetary penalties, but on promoting the quickest possible identification and remediation of compliance failures.
- ii. Incorporate an assessment process that targets negligently or intentionally non-compliant parties, particularly those found to be engaging in fraud, and employs broad discretion in the determination to assess liquidated damages against generally compliant parties demonstrating robust efforts to meet ACAS requirements.
- iii. Include a sufficiently long period of informed compliance, similar to that utilized in the implementation of ISF, to allow the trade to make all necessary process changes and IT system modifications to meet ACAS requirements, and to allow lessons learned to be taken into account in the development of the end-state compliance regime.
- iv. It is further recommended that the approach set out above also be used to make improvements to the current Air AMS regime and serve as the basis of the compliance regime of other advance data systems, such as the planned automated export system.

d. The Data Element definitions drafted for ACAS should:

- i. Promote the earliest possible transmission of data for targeting, and should match as closely as possible the working definitions that have been used and thoroughly tested during the pilot period.
- ii. Be more expansive than the equivalent Air AMS data element, recognizing the “raw nature” of an ACAS data transmission - dictated by both operational circumstances

and risk targeting methodology - that does not allow attainment of narrow AMS data definition standards.

III. Correspondence to COAC 12th Term Recommendations

The recommendations made above are consistent with earlier recommendations, but add nuances that were not considered in the February and December 2012 COAC meetings. In particular, pilot experience and ongoing discussions in international forums have highlighted the desirability of maintaining ACAS and Air AMS as fundamentally distinct regimes - with different objects/goals, different impacts on carrier operations, and different constraints - that necessitate divergent approaches to subjects such as required data elements, pre-requisites for participation, the regulatory and IT structure of filing regimes applicable to different business models, and the structure/application of the compliance regime. With relation to the specific recommendations made during COAC's 12th term:

- February 2012 Recommendation: Leveraging pre-departure House AWB data for both ACAS and Air AMS. The new recommendations make clear that the IT system and regulatory regime should allow ACAS data to be used for Air AMS, but only in cases where the filer is authorized to participate in both systems and has elected to have the single transmission suffice for both requirements.
- February 2012 Recommendation: Regulatory change allowing direct air freight forwarder transmission to AMS. The new recommendations have tweaked this recommendation based on the factors discussed above that distinguish ACAS from Air AMS. Freight forwarder participation is key to the success of ACAS for the freight forwarder / conventional carrier business model, but ACAS and Air AMS remain distinct systems with distinct features and purposes. For the trade, there is concern that subjecting forwarders to full requirements for Air AMS participation and to its compliance regime would constitute an undue burden that would discourage forwarder participation in ACAS. Simultaneously, trade understands the government's concern with its current ability to fully regulate off-shore forwarder participants. The current recommendations therefore promote the creation of a separate ACAS filer category with pre-requisites and requirements that differ considerably from those of Air AMS, and in which the transporting carrier maintains the ultimate responsibility for ACAS transmission/verification.* A freight forwarder would therefore be able to participate in "ACAS only", providing significant security and operational benefits to the supply chain, in particular to both forwarders and transporting carriers. Should a freight forwarder qualify as both an ACAS and Air AMS filer, he would have the option (as should all parties who participate in both ACAS and Air AMS) to elect that his ACAS transmissions also suffice for Air AMS.

* Air carriers remain philosophically in favor of a full regulatory compliance regime for advance data filers other than transporting carriers, but the ACAS WG believes this topic will require intensive discussion and long-term work, and that such a regime should apply to all types of advance data filers, including those filing into the existing Air AMS system and the planned automated export system, and therefore considers it beyond the scope of the ACAS WG's mandate.

- December 2012 Recommendation: Creation of a fifth option – IATA air freight forwarders – to the list of parties qualified under 19 CFR 122.48a(c)(1). This is closely-related to the February 2012 recommendation to allow freight forwarders to transmit to AMS. As discussed above, the current recommendations modify this concept to endorse the creation of a specific ACAS-filer category, independent of the Air AMS regime and distinct from Air AMS requirements, that would promote and facilitate freight forwarder participation in ACAS.